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ADDRESS OF MR. ALEJANDRO ALVAREZ,
OF SANTIAGO, CHILE.

[Translation read by Mr. L. S. Rowe, of Philadelphia, Pa.]

Mr. Chairman and Gentlemen of the Society: I wish to say by preface that the subject of this paper was the subject for discussion at the recent Pan-American Scientific Congress, and, in fact, about the topic of this paper was grouped the discussion of the section on international law. Probably the most important question presented to that section was embodied in the paper presented by Dr. Alvarez, and gave rise to prolonged discussion, occupying three days of the Congress. The present address discusses the topic:

Are there problems and conditions peculiar to American international law? If so, can it be said that they constitute the basis for American principles in international law?¹

I

That international law has not enjoyed the same position as other branches of political science is due to the fact that there has often existed a marked difference between the *principles* which publicists have set forth as international law, and the *practice* of the various nations.

Early publicists assumed as fundamental that international law is *universal* because it applies to the community of states; and *unchangeable* because such is natural law, which is the original source from which international law derives its precepts permitting of no variation except in secondary and minor matters.

The introduction of systematic observation into the political and social sciences has given to these subjects a more practical and definite character. This method has not as yet entered sufficiently into the treatment of international law; a defect which is particularly felt in the countries accustomed to codified law.

Modern publicists have given a sounder basis to international law

¹ The translation was prepared by Miss Margaret M. Hanna, of Washington, D. C.

by substituting actual diplomatic precedents for abstract principles. They have thus demonstrated that these principles are constantly changing. Although admitting the evolutionary character of the principles of international law, modern publicists still regard these principles as *universal* in application. They can not conceive that rules governing the community of nations could have any other character. These rules might vary, or there might be special rules governing the relations of civilized peoples with semi-civilized or savage races; but that within the community of civilized nations the precepts of international law are not universal would be equivalent, they say, to destroying the basis of the society of nations.

This contention, which was undoubtedly true when the community of nations was confined to European states, is not entirely correct now that America has enlarged the boundaries of that community. The nations of the new world, though of the same civilization as Europe and though closely bound to Europe by ties of every kind, were born and have developed under conditions peculiar to themselves, and necessarily bear the individual mark of their origin and development. The far-reaching influence which the American continent has exerted on the development of civilization has received but little attention, nor has any careful study been made of the great number of new problems to which the development of the new continent has given rise.² This is due, in large part, to the widespread belief that the precepts governing international law must be universal,

² The only phase of the question which has been studied has been the influence of the United States on the development of public law and political institutions. Condorset published in 1786 his work on "The Influence of the American Revolution on Europe." In 1896 President Charles W. Eliot, of Harvard University, published a work entitled "American Contributions to Civilization," (republished in a work of the same title which the author published in 1907, [By The Century Company, New York]). Dr. Muensterberg, also of Harvard University, has criticised the conclusions of Dr. Eliot's work in a volume entitled "American Traits."

The first Pan-American Scientific Congress, which met in Santiago, Chile, from December 25, 1908, to January 5, 1909, devoted itself exclusively to the study of problems of American interest along various lines of activity and to determining the best means of elucidating them. The program of the several sections of the Congress, particularly of the social sciences, is a fair showing of the questions characteristic of this hemisphere.

and that consequently the incorporation of America into the community of nations could³ produce no effect other than to make the international rules which governed the community of Europe equally applicable to it.

I desire now to consider, in a general way, the most important aspects of this influence — especially those which have grown out of the existence of conditions, problems, and factors peculiar to the American hemisphere. I shall consider whether such conditions and international problems really exist; and if so, whether or not they have given or can give rise to distinctive American principles of international law; also to what extent these principles have modified or will modify the dogma of universality heretofore regarded as inherent in international law.

II

From the beginning of its existence as an independent nation, the government of the United States (as well as the Latin-American states following the example of the United States) has insisted that the new world, by reason of its geographical position, its peculiar social conditions, the character of its peoples, the vastness of its area and the richness of its soil, formed a hemisphere distinct from the old, which should not be absorbed by the old but should be left free to follow its own destinies.

The American governments did not accept, in the political organization of their respective countries, those principles of public law then dominant in Europe which were not suited to the conditions of life in those states. In their foreign relations, they rejected all the existing principles and practices which were contrary to their independence or did not favor their free and untrammelled growth.

In fact, the United States from the end of the eighteenth and the Latin-American states from the commencement of the nineteenth centuries proclaimed and sustained by force of arms their right to

³ Prof. Nys, of the University of Brussels, has recently begun the publication of a study of the influence of the United States on international law, — "*Les Etats Unis et le Droit des Gens*" in the "*Revue de Droit International et de Législation Comparée*," second series, vol. XI, 1909, pp. 37-65.

independence from their respective mother countries, demanding to be treated not as rebels, as the former claimed they were, but as belligerents. They insisted likewise upon the independence of the states of America, that is, that there should be no intervention by European states; and further that the new world should no longer be a field for colonization and that all its territory, even that unexplored or the regions nullius (according to the then dominant doctrines of law) was subject to the sovereign authority of the independent American states.

The American states further held that they formed a great family of nations by reason of which there should exist among them close fraternal ties. To effect this, they negotiated treaties of amity and commerce, and brought about international conferences with a view to determining their internal and foreign relations and to regulating other matters of especial interest to them.

The equality of the states of America was likewise recognized, that is, that there should not be amongst them any political pre-eminence.

All these principles were happily and opportunely synthesized in the Monroe Doctrine which became the political gospel of the New World, and the United States — as the most powerful nation — was its defender.

These declarations are of American origin in their practical realization, because they were proclaimed at a period when they were not recognized by Europe and when the right of intervention and the "balance of power" still controlled international relations. To-day those principles constitute the basis of international law.

Moreover, the Latin-American nations, in their early international conferences, among other principles equally variant from those which then governed the universal community of states, declared three principles which should not be regarded as Utopian because they continue to receive the acceptance of the United States and the Latin-American countries. These three principles are:

1. No foreign state shall acquire any part of the territory of an American state, even with the acquiescence of that state;

2. Neither may any foreign state permanently occupy any portion of the territory of an American state, even by right of conquest;

3. The states of the New World may not place themselves under the protectorate of any European state.

These doctrines, apparently hostile to Europe, were in fact merely directed to assure the absolute independence of the states of the New World as against the old, and are in this sense an extension of the Monroe Doctrine. They aim therefore to apply only to the relations between the two hemispheres and not to the relations between the American states themselves. The European states, although tacitly respecting these declarations, do not recognize them as an integral part of international law.

There has also been a desire on the part of some of the states of America to proclaim additional principles, such as the territorial integrity of the states of the New World: but this has been merely a noble aspiration and has not been recognized practically either in the doctrine of publicists or in the diplomatic history of this continent.

It is plain then that the countries of the New World have maintained and still maintain, as applicable to this hemisphere, certain rules and principles which were formerly not recognized, and some of which are not yet accepted, by the European states and consequently are not incorporated in modern international law. The European states not only decline to accept them as international law, but — without giving due appreciation to their origin and foundation — class them as an abuse of the policy of the United States, while in fact they have been equally proclaimed and declared by the Latin-American states as a necessity due to the conditions of their political life and development.

And not only this; because of these peculiar conditions of political life and development, many of the international factors which have become pretty well defined and generalized in Europe and are given an important place in international law, have no application to the countries of the New World. Some of these peculiar conditions may be mentioned as: diversity in the form of government; the "colonial" regime; immigration; etc. These conditions have brought about problems in law which may be termed "*sui generis*" or distinctively American.

Without going into a detailed study of these problems [which I dwelt upon at length in Part I], it may be well to mention those growing out of questions of nationality; of civil war; of boundary controversies; the investment of capital; immigration; and the settlement of foreigners.

Questions of nationality are not always looked upon nor dealt with among us as they are in Europe. There is to some extent a clash of interests between the European and American states, particularly affecting questions of origin, the European countries maintaining, as a rule, the principle of *jus sanguinis* and the American states holding to the principle of *jus soli*.

In South America boundary controversies have been based generally on the theory that the right to the disputed zone is derived from the *Uti Possidetis of 1810*, which is vague and sometimes conflicting and on that account has often led to three countries claiming the same territory.

The investment of European capital has given rise to a number of characteristic problems, especially when capital has been employed in the acquisition of large tracts of land and when the proprietors or grantees have been given the right to exercise certain powers of sovereignty over their possessions.

Among the problems distinctively American may be mentioned the responsibilities of a state for the acts of savage tribes, or semi-savage inhabitants.

III

I believe therefore that it is clear that while there are international problems and conditions purely European, and having nothing to do with the New World, there are likewise numerous conditions, problems, and factors of a distinctively American character.

I wish now to raise the question whether these factors give rise to distinctively American principles of international law.

With respect to the first grouping, constituting principles growing out of the Monroe Doctrine and its extensions, we have seen that they may be regarded not merely as incidents of policy but as declarations of actual principles of international law of American origin. Some of these declarations have been tacitly accepted by European states;

others, less indisputable, have not as yet reached this point, but by reason of their great importance should not pass unnoticed in a work on international law.

The second and third groups include the distinctively American problems.

The principal inquiry in this connection is to determine how these problems are to be viewed and elucidated, whether by the general principles of international law or by special doctrines adapted to their peculiar nature.

Theoretically the answer is not difficult.

If the general principles of international law can be applied without perversion they should be applied. This occurs in matters relating to the investment of capital, in questions growing out of civil wars, or jurisdiction over semi-savage tribes within its territory and under its sovereignty, but over whom effective control is not exercised; the hegemony of the United States; etc., etc.

Aside from the factors above mentioned, the foreign policy of the states of America furnishes two additional elements of importance and note in international law.

In conventions signed by those states at the Pan-American Conferences, questions of exclusively American interest are considered, such as questions relating to the Pan-American railway, customs matters, etc.; the most noteworthy act being that creating an *International Union*, and also the convention aiming at the codification of international public and private law.

The Union, whose executive organ is the International Bureau of the American Republics, is for the purpose of disseminating important data concerning the several countries composing the Union and for the purpose of maintaining and strengthening the interests common to all. It is a great step toward the unifying and harmonizing of the most important American interests. There is nothing comparable to it in Europe. The unions there have a more or less restricted and definite object.

There have also been framed in the Pan-American Conferences conventions of universal interest but in which general world agreement has not yet been possible, such as extradition, the exercise of

professional rights such as copyrights, trade-marks, etc. In this way the American states have put on a definite basis some matters which have not yet a fixed place in international law.

But where those principles cannot be applied without perversion of the problem, as for instance in questions touching the responsibility of the state, in the instance above cited, such as neutrality, boundary disputes, etc., then it is necessary to look for a solution by special principles, suited to the peculiar requirements. To do otherwise would be equivalent to denying to the countries of the New World, which by reason of their origin or geographical situation may have these peculiar problems, the right to develop and progress along natural lines.

Sometimes these principles have been declared by the American states themselves, in international conferences, conventions, or practices, and in such cases no doubt can be entertained as to their application.

In this way, a number of questions of nationality have been settled by the laws of the nations of the Western Hemisphere very differently from the laws on those questions in European states, because of the antagonism of interests on these questions between the two hemispheres.⁴

In the settlement of disputes concerning the delimitation of boundaries a principle of purely American origin is frequently involved, namely, the *Uti Possidetis of 1810*, which has been recognized by many of the states of the New World in treaties, conventions, and acts. This principle modifies, defines, and at the same time is influenced by the general principle of long continued pacific possession of disputed territory.

In some instances it is comparatively easy to apply special principles of law when the American states are in accord upon those principles; this is not the case with those problems, urgently demanding solution, but as to which there have not been established any well defined doctrines or practices applicable to them.

⁴ The differences existing between the decisions of European and American States on many points of nationality are discussed in my work "*La Nationalité dans le Droit International Américain*." A. Pedone, Paris: 1907.

It is very desirable to remedy this great need by making it the subject of especial study in the universities, in scientific congresses, and in the Pan-American conferences.

The fourth and fifth groups of problems include subjects regulated by the states of America in international conferences which are sometimes of exclusive interest to those states and sometimes of more general or universal interest. It seems superfluous to say that those subjects may be regulated by the American states in the way which they may deem most appropriate. As a matter of fact, they have not deviated from the rules followed by Europe upon the same questions, except in some special circumstances.

Although such conventions bind only the countries which subscribe to them, yet when all the nations of the hemisphere shall have ratified them, such conventions have great moral weight and will certainly exercise some influence upon the general principles of international law.

IV

As a whole the five classes or groups of subjects above outlined may be denominated American international law, although this expression may be misunderstood, having been elsewhere used in a different acceptance.⁵

⁵ One acceptance of the term American international law occurs in the collection of concrete precedents in international questions arising in America. Pradier-Fodéré uses the term in that sense in his: "*Traité de Droit International Public Européen et Américain*;" also Seijas, in his: "*El Derecho Internacional Hispano-Americano Publico y Privado*," Caracas, 1884.

In the United States certain publicists have collated and classified methodically certain international questions which interest their country and which have been the subject of conventions, diplomatic negotiations, or decisions of Courts of Justice. Such works have likewise been termed American international law works, as: Wharton, "*A Digest of the International Law of the United States*," and Moore, "*A Digest of International Law*," 8 Volumes, Washington, 1906.

Another acceptance of the term is to compare it to the European international law, to demonstrate that there is an antagonism of interests between the old and the new continents. The declared existence of American international law in this sense naturally provokes lively protestation on the part of the states of the two hemispheres, since it is absurd to look for or to infer antagonism where solidarity alone is expected. It was understanding the acceptance of the expres-

The classification and study of these subjects would be for the purpose of showing the influence of America in the development of international law and, more particularly, to show the existence of conditions and problems essentially American and the advisability of agreeing upon suitable rules to meet such conditions and problems. In referring to the existence of "American problems" it is not intended to infer that these problems may not arise in Europe or in other continents; but merely that they are characteristic of the New World where they should be for that reason especially studied.

It is not necessary, for the purposes of this paper, to consider exactly what is understood by "the American continent" or by the expression "American states;" neither is it necessary, at this time, to argue whether the colonies under European jurisdiction in this hemisphere should be included in the expression; if any problems of the above nature arise in those colonies, they would concern the mother country itself, and not the colony, the latter having no independent existence among the community of states.

The problems to which we have above referred do not destroy the

sion in this sense that led certain delegates to the First and Second Pan-American Conferences to deny the existence of the law. See "International American Conference," official edition, Washington, 1890, Vol. II, pp. 969-970, also "Protocols and papers of the Second Pan-American Conference," Mexico, 1902, Vol. I, pp. 342-343.

In a third acceptance of the term, the solidarity of interests between groups of American States is understood in the use of the expression "public American law" or "public South American law." See preamble of the Treaty of April 20, 1886, between Peru and Bolivia for the settlement of boundaries.

A fourth acceptance of the expression is with regard to international rules which the American states have expressly recognized in Pan-American conferences, giving them great importance. For example: The First Pan-American Conference recognized arbitration; and the second conference recognized the principles contained in the three conventions signed at the First Hague Conference as rules of "American International Law."

Lastly, a fifth acceptance of the expression is with regard to rules "*suí generis*" where it is desired to declare rules peculiarly American. Such a purpose is aimed at by the author of the doctrine known as the "Drago Doctrine." See, Drago on "Les Emprunts d'état et leurs Rapports avec la Politique Internationale," in the "Revue Générale de Droit International Public," Vol. XIV, 1907, pages 271 and 287. Cf. Moulin: "La Doctrine de Drago," in the same Review, Vol. XIV, pp. 466-468.

universal community of nations, but rather present it in its true character, since those questions are the logical consequences of the peculiar conditions of life of a group of states forming part of the community of nations. Neither do the American principles or special rules for elucidating those problems, or for the purpose of regulating certain existing conditions, destroy the community of states.

No useful purpose is subserved by the contention that all international rules must be universal throughout the community of nations. The solidarity of nations does not consist in their being guided always by the same principles but rather that they be guided by well-defined principles which take account of the peculiar conditions of certain groups of states so that the latter may develop in harmony with their special needs.

The practice followed by several countries with respect to certain matters (in which they differed from the practice followed in other countries) corroborates this view. England, for instance, owing to her geographical situation holds, in regard to the law of maritime warfare, to different practices than other countries and yet is not in any degree criticised therefor.⁶ Therefore it is the more reasonable view that there exist differences in international law affecting, not merely one country, but an entire hemisphere or continent.

So necessary is it that the community of states shall have special rules adapted to special conditions that, for example, a code which by its very nature must be universal, namely, canon law, admits these distinctions, yet it does not thereby lose its character as canon law. In fact there are doctrines of canon law which are only applicable to the continent of Europe and others which are only applicable to the American continent — in a word, there are matters which are not regulated alike in both hemispheres. A collection of these doctrines might be termed "American canon law."

It is not to be inferred that, by accepting the viewpoint above set forth, it is proved that the American continent has an international law so distinct as to become a weapon against Europe. It is neither

⁶ See, on this point, Dupuis: *Le Droit de la Guerre Maritime d'Après les Doctrines Anglaise contemporaines*. Paris: 1899.

to threaten nor to disturb the harmony of nations that the New World, in its foreign relations, bears the seal of its peculiar conditions of development.

There is no attempt to establish two international law codes antagonistic to one another, but only to correct in actual practice the old dogma of absolutism and universality of all the rules which make up international law, and to supplement its provisions by a recognition and study of the special problems and conditions which up to this time have been ignored or at best little considered. It is not expected that America shall enjoy special rules as a privilege, but merely that the science of international law shall take into due account and give a just measure of appreciation to the needs of our civilization and to the actualities of our national life.

v

In spite of the obvious existence of an "American international law" in the acceptance which we have just indicated, it has not been recognized in the works of publicists either European or American.⁷

It is through failure to consider international law in its American aspect that has occasioned not a few of the difficulties and misunderstandings in the relations between the nations of the two hemispheres. It is also the reason that the Pan-American conferences have not brought about the rich results which might naturally be expected of them.

If we are to arrive at any really practical conclusion in the present discussion it is that "American international law" (in our acceptance of the expression) shall be systematized and carefully studied. Such study will also necessarily bring forward for appropriate solution the problems characteristic of the New World. The solution

⁷ The only publicist who has grasped the idea of an "American international law" is Alcorta: *Cours de Droit International Public*, Vol. I, Paris, 1887 (Preface, Chap. II, No. II, and Chap. IV, No. VI), but he has not expressly affirmed its existence nor indicated its fundamental characteristics, nor much less the factors which constitute it. But even in his *Curso de Derecho Internacional Privado* (Buenos Aires, 1887) in the chapter on nationality he does not declare the distinctively American characteristics of that question nor its peculiar features in the several nations of this continent.

reached should also indicate in what instances American principles are applicable to the states of this hemisphere alone, and in what instances they are to be respected by the states of Europe. In taking up this study all of us should make of it a common task, moving along in harmony, taking up the study without undue haste, avoiding baseless theories, and that vacillation and unreasonable timidity which are but the fruit of traditional prejudice.

The Third Latin-American Scientific Congress, which met in Rio de Janeiro in 1905, adopted a proposal we submitted, as delegate of Chili, in the form of a resolution recognizing the existence of an "American international law" in the acceptance of the term outlined above, and recommending its study in the several universities of the new continent. We submitted a similar proposition to the Committee on Social Sciences, of the Fourth Scientific Congress (First Pan-American). In the views then set forth, we held only that there are international problems and conditions characteristic of the New World. We did not attempt to show in any definite manner that there existed at the same time principles of American origin to solve and settle many of those problems and conditions. The fear of the congress to make any declarations which, however exact, might be misinterpreted in Europe made us refrain from giving expression to this portion of our views.

The conclusions which we presented for the approval of the congress were as follows:

The First Pan-American Scientific Congress recognizes that the diversity in the development of the New World, as compared with the old, has had the following effect upon international relations, namely, that there have been and are general problems and conditions in Europe which have no application to the American continent; that the American continent has problems *sui generis* or distinctively American; and that the states of the American continent have dealt with subjects in the Pan-American Conferences which are of interest only to those states or which if of universal interest have not yet been susceptible of universal agreement.

This class of questions constitutes what may be termed "American problems in international law."

The First Pan-American Scientific Congress commends to all American states to have the members of their faculties of jurisprudence and social science give attention to the study of "American international law."

This proposition was afterwards amended by substituting the phrase "American problems in international law" for the phrase "American international law."

The Brazilian delegate to the Congress, Senor Sa Vianna, discussing whether an "American international law" did or did not exist, submitted the following views:

To consider the peculiar conditions of the states of the New World does not of itself establish the existence of an American international law, save when that law shall regulate relations exclusively between and restricted to the several American states, because the very nature and functions of this branch of international law are opposed to that theory.

In view of this divergence of views, the Section of Social Sciences appointed a committee to endeavor to bring into accord the two propositions.

The proposal drawn up by the committee and approved unanimously at the session of the 31st of December last reads as follows:

The First Pan-American Scientific Congress recognizes that the diversity in the development of the New World as compared with the old has had the following effect upon international relations, namely: that on this continent there are problems *sui generis* or of a distinctively American character and that the states of this hemisphere, by means of agreements more or less general, have regulated matters which are of sole concern to them, or which, if of universal interest, have not yet been susceptible of universal agreement—thus incorporating in international law principles of American origin.

This class of questions constitutes what may be termed "American problems or conditions in international law."

The Scientific Congress recommends to all the states of the American continent that the faculties of jurisprudence and social science give attention to the study of these matters.

The CHAIRMAN (Mr. Straus). This concludes the program for this evening. I think a word of recognition should be stated, appreciating this very interesting presentation of American international law by Dr. Alvarez, the counsellor of the Chilean foreign office, who has come here from Chile to present this paper, and which has been so clearly translated by Prof. Rowe.

I would call attention to the fact that the meeting to-morrow morning begins at ten o'clock, and the subject is as stated on the

program: "The constitution and powers which an international court of arbitral justice should possess."

Mr. ROWE. Mr. President, I do not deserve the praise bestowed upon me, because the translation was made, I think, by Dr. Scott.

The CHAIRMAN: Then, I will thank you for the excellent reading and presentation of the paper, and Dr. Scott for the translation.

Mr. SCOTT. I think I shall also have to disclaim the honor. The translation was made by Miss Hanna, of the Department of State.

The CHAIRMAN (Mr. Straus). This closes the proceedings for this evening.

Thereupon, at 10:25 o'clock p. m. the Society adjourned.